

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4875 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5: No

GOVINDBHAI JIVABHAI GADHAVI

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 20/03/98

ORAL JUDGEMENT

1. The petitioner-workman was a conductor in the ST Corporation. On expiry of his conductor licence and before its renewal, there was some gap and there is some dispute as to what happens during that period; whether he is placed in 'line spare list' or whether he is marked present and gets his pay or he is considered absent from duty. Even if it is assumed in favour of the ST Corporation that during this period, he remained absent

from duty without leave, dismissal for such minor misconduct of absence without leave, when he could not have performed duty without the conductor licence could not be considered to be so grave as to visit with the penalty of dismissal. The Labour Court has, therefore, rightly reinstated him with benefit of continuity of service, but the Labour Court has withheld total back wages of five years from 4.10.1978 till 15.11.1983. The denial of five years back wages is, in the facts of the present case, excessive. The fault of passing disproportionate punishment was with the management. Even though the workman was guilty of minor misconduct, there could not have been denial of five years back wages by way of penalty.

2. In view of the above, the award of the Labour Court is modified by setting aside the direction regarding denial of back wages and substituting it by direction of 50% payment of back wages for the interregnum period i.e. from the date of dismissal till the date of reinstatement. The back wages shall be paid within three months from the date of service of the writ.

Rule made absolute accordingly.

mhs/-